



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Willis

**Respondents:**

1. **GWB Harthills LLP**
2. **Ms H Russell**
3. **Ms E Lord**

## JUDGMENT ON APPLICATIONS FOR RECONSIDERATION

The claimant's applications for reconsideration of the Tribunal's judgments in these proceedings are refused under rule 72(1) of the Employment Tribunals Rules of Procedure 2013 as there is no reasonable prospect of the judgments being varied or revoked.

### REASONS

1 The claimant in these proceedings, Mr Willis, has applied on 20 July 2023 for reconsideration under rule 70 of the Employment Tribunals Rules of Procedure 2013 of the three substantive judgments of the Tribunal: (1) the Liability Judgment in Claim 2 (case no 1803135/2021) sent to the parties on 3 May 2022; (2) the Costs Judgment in Claim 2, sent to the parties on 21 December 2022; and (3) the Remedy Judgment in Claim 1 (1802068/2020), also sent to the parties on 21 December 2022.

2. The grounds are the same for each of the three judgments: that new evidence has become available since the dates of the relevant hearings which was not available, and the existence of which could not have been known, at the time of the hearings. The claimant says that the new evidence is relevant to the issue of dishonesty and the findings of the Tribunal, which I interpose were highly critical of the claimant, in respect of his claiming Income Protection Benefit (IPB) under an insurance policy with Aviva whilst still being entitled to profit share as a partner in the first respondent firm, GWB Harthills LLP.

The claimant contends that the new evidence would have had an important substantial influence on the Tribunal's findings had it been available, and it is therefore in the interests of justice for the judgments to be reconsidered.

3. The new evidence consists of (1) letters from Aviva's solicitors, Mills & Reeve, dated 15 December 2022, 9 May 2023 and 10 July 2023 relating to the claimant's claim for and entitlement to IPB; and (2) a letter from an Investigation Officer at the Solicitors Regulation Authority (the SRA) dated 12 May 2023 concerning possible disciplinary action against the claimant in his capacity as a solicitor.

4. In summary of the new evidence, the letters from Mills & Reeve set out Aviva's considered position that although the claimant had not been entitled to be paid IPB when continuing to receive profit share and was therefore now required to repay the IPB paid to him totaling, including insurance premiums, just over £282,000, the overpayments had resulted from a misunderstanding about the claimant's circumstances regarding profit share. The decision of the SRA's Investigation Officer was that the claimant had believed that he was entitled to receive profit share and IPB at the same time if the benefits were paid into his pension fund and there was insufficient evidence to prove, to the required standard, a breach of the SRA's rules.

5. Rule 70 of the Employment Tribunals Rules of Procedure 2013 provides that a Tribunal may reconsider any judgment where it is in the interests of justice to do so. Rule 71 states that the application for reconsideration must be presented in writing within 14 days of the date on which, relevantly, the written reasons for the judgment were sent to the parties. Rule 72(1) provides that where the Employment Judge dealing with the application considers that there is no reasonable prospect of the judgment being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall require a response to the application from the other parties and the application shall then be dealt with in accordance with rule 72(2). By rule 72(3), the initial consideration under rule 72(1) shall be, where practicable, by the Employment Judge who chaired the original tribunal panel but, in these proceedings, it is not practicable because of ill-health for Employment Judge Rogerson to deal with it and I have substituted myself as the Employment Judge for this purpose.

6 I have carefully read the claimant's applications and the new evidence. I accept that the new evidence did not exist when the Tribunal made its original decisions. I accept that although the claimant has made the applications substantially outside the time limit in rule 71, he made the applications within a reasonable time of when he became aware of the new evidence, meaning I should exercise my discretion to extend time.

7. I have decided that I should refuse the applications under rule 72(1) of the Employment Tribunals Rules of Procedure 2013 because there is no reasonable prospect of the judgment being varied or revoked. My reasons are these.

8. The Tribunal made its findings about the claimant's conduct in claiming IPB (and I accept that those findings were material to the judgments which are the subject of the claimant's applications for reconsideration, although there were additional grounds for the

findings about his honesty) based on the extensive evidence it heard and saw, both witness and documentary, during lengthy full merits hearings at which the parties were represented by experienced counsel and for the reasons set out in detail in its written decisions. The new evidence on which the claimant relies is not evidence of primary fact. It consists of after-the-event assessments by an insurance company and a regulatory body, reached without formal judicial process or taking evidence at a hearing in the way the Tribunal did. I accept that those carrying out the assessments in the new evidence have taken a more benign view of the claimant's conduct than did the Tribunal. But having regard to the Tribunal having made its findings after a full and comprehensive judicial process, there is no reasonable prospect that the Tribunal will vary or revoke its judgments because of this new evidence. I therefore refuse the claimant's applications under rule 72(1).

Regional Employment Judge **Robertson**

Date: 4 August 2023